

1. Did claimant sustain either an accidental injury or contract a disease that arose out of and in the course of employment?
2. If so, did claimant provide respondent with timely notice?

FINDINGS OF FACT

After reviewing the file compiled to date, the Board finds:

1. Ms. Sauerwein began working for the Sedgwick County Area Educational Services Interlocal Cooperative (SCAES) in August 1995. Ms. Sauerwein was hired as a paraprofessional to work with preschool age children with mental, behavioral, or physical disabilities. The job included tending to the children's personal hygiene needs such as changing their diapers and wiping their noses.
2. During orientation, Ms. Sauerwein's supervisor advised her that the Hepatitis B vaccination was required because of Ms. Sauerwein's job classification and the amount of contact that she would be having with children.
3. Ms. Sauerwein received the first of three Hepatitis B inoculations on August 24, 1995. Within days, she noticed a knot and swelling in her arm, fever, and achiness all over. After the second inoculation on October 5, 1995, she noticed similar symptoms, plus she began experiencing migraine headaches. After the third inoculation on March 26, 1996, she also experienced vision problems.
4. Ms. Sauerwein's illness remained undiagnosed until March 19, 1998. At that time Dr. James D. Anderson diagnosed central nervous system demyelination. The doctor confirmed Ms. Sauerwein's suspicions that her illness was probably caused by the Hepatitis B vaccination.
5. Ms. Sauerwein did not learn until May 11, 1998, when she spoke with a products liability attorney about her illness, that her illness might be considered a work-related injury. That same day Ms. Sauerwein verbally informed her supervisor at SCAES that her illness was work related.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. The Judge found that Ms. Sauerwein's date of accident was March 19, 1998, when she learned that her illness was more probably than not caused by the Hepatitis B vaccination. The parties do not contest the Judge's finding of date of accident.

3. The Judge found that Ms. Sauerwein's illness arose out of and in the course of her employment with SCAES. The Board agrees. SCAES and its insurance carrier argue that Ms. Sauerwein's illness did not arise out of and in the course of her employment because the vaccination was voluntary. Besides disagreeing with that legal analysis, the Board finds that Ms. Sauerwein was instructed by her supervisor to obtain the vaccination.

4. Because Ms. Sauerwein did not learn until May 11, 1998, that her illness could be considered as being related to her work, the Board finds that there was just cause to extend the period for providing notice to 75 days.¹

5. SCAES and its insurance carrier argue that Ms. Sauerwein should not receive temporary total disability benefits because she allegedly has not made a good faith effort to return to work. A preliminary hearing finding that a worker is temporarily and totally disabled is not subject to review in an appeal of a preliminary hearing order.²

6. For future reference, the parties may wish to introduce only those medical records that are material to the issues. Hundreds of pages of records were introduced at the preliminary hearing that were neither important nor material enough to warrant reference in the parties' briefs.

WHEREFORE, the Appeals Board affirms the April 29, 1999 preliminary hearing Order entered by Judge Nelsonna Potts Barnes.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
P. Kelly Donley, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

¹ See K.S.A. 44-520.

² See K.S.A. 1998 Supp. 44-534a(a)(2).